

110TH CONGRESS  
2D SESSION

# H. R. 7175

To amend the Small Business Act to improve the section 7(a) lending program, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 27, 2008

Ms. VELÁZQUEZ (for herself, Mr. CHABOT, Mr. DAVID DAVIS of Tennessee, Ms. CLARKE, and Mr. CUELLAR) introduced the following bill; which was referred to the Committee on Small Business

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## A BILL

To amend the Small Business Act to improve the section 7(a) lending program, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “Small Business Financing Improvements Act of 2008”.

6 (b) **TABLE OF CONTENTS.**—

Sec. 1. Short title; table of contents.

### TITLE I—7(a) LOAN PROGRAM

Sec. 101. Loan pooling.

Sec. 102. Alternative size standard.

### TITLE II—504 CDC PROGRAM

- Sec. 201. Definitions.  
 Sec. 202. Eligibility of development companies to be designated as certified development companies.  
 Sec. 203. Definition of rural areas.  
 Sec. 204. Businesses in low-income areas.  
 Sec. 205. Combinations of certain goals.  
 Sec. 206. Refinancing.  
 Sec. 207. Additional equity injections.  
 Sec. 208. Loan liquidations.  
 Sec. 209. Closing costs.  
 Sec. 210. Uniform leasing policy.

TITLE III—SMALL BUSINESS INVESTMENT COMPANY PROGRAM

- Sec. 301. Simplified maximum leverage limits.  
 Sec. 302. Simplified aggregate investment limitations.

1       **TITLE I—7(a) LOAN PROGRAM**

2       **SEC. 101. LOAN POOLING.**

3           Section 5(g)(1) of the Small Business Act (15 U.S.C.  
 4       634(g)(1)) is amended—

5           (1) by inserting “(A)” before “The Administra-  
 6       tion”;

7           (2) by striking the colon and all that follows  
 8       and inserting a period; and

9           (3) by adding at the end the following:

10          “(B) A trust certificate issued under subparagraph  
 11       (A) shall be based on, and backed by, a trust or pool ap-  
 12       proved by the Administrator and composed solely of the  
 13       guaranteed portion of such loans.

14          “(C) The interest rate on a trust certificate issued  
 15       under subparagraph (A) shall be either—

16           “(i) the lowest interest rate on any individual  
 17       loan in the pool; or

1           “(ii) the weighted average interest rate of all  
2           loans in the pool, subject to such limited variations  
3           in loan characteristics as the Administrator deter-  
4           mines appropriate to enhance marketability of the  
5           pool certificates.”.

6 **SEC. 102. ALTERNATIVE SIZE STANDARD.**

7           Section 3(a) of the Small Business Act (15 U.S.C.  
8 632(a)) is amended by adding at the end the following:

9           “(5) OPTIONAL SIZE STANDARD.—

10           “(A) IN GENERAL.—The Administrator  
11           shall establish an optional size standard for  
12           business loan applicants under section 7(a) and  
13           development company loan applicants under  
14           title V of the Small Business Investment Act of  
15           1958, which uses maximum tangible net worth  
16           and average net income as an alternative to the  
17           use of industry standards.

18           “(B) INTERIM RULE.—Until the date on  
19           which the optional size standards established  
20           under subparagraph (A) are in effect, the alter-  
21           native size standard in section 121.301(b) of  
22           title 13, Code of Federal Regulations, or any  
23           successor thereto, may be used by business loan  
24           applicants under section 7(a) and development

1           company loan applicants under title V of the  
2           Small Business Investment Act of 1958.”.

3           **TITLE II—504 CDC PROGRAM**

4           **SEC. 201. DEFINITIONS.**

5           Section 103(6) of the Small Business Investment Act  
6 of 1958 (15 U.S.C. 662(6)) is amended to read as follows:

7           “(6) the term ‘development company’ means an  
8           entity incorporated under State law with the author-  
9           ity to promote and assist the growth and develop-  
10          ment of small business concerns in the areas in  
11          which it is authorized to operate by the Administra-  
12          tion, and the term ‘certified development company’  
13          means a development company which the Adminis-  
14          tration has determined meets the criteria of section  
15          506;”.

16          **SEC. 202. ELIGIBILITY OF DEVELOPMENT COMPANIES TO**  
17                                   **BE DESIGNATED AS CERTIFIED DEVELOP-**  
18                                   **MENT COMPANIES.**

19          Section 506 of the Small Business Investment Act  
20 of 1958 (15 U.S.C. 697c) is amended to read as follows:

21          **“SEC. 506. CERTIFIED DEVELOPMENT COMPANIES.**

22          “(a) **AUTHORITY TO ISSUE DEBENTURES.**—A devel-  
23          opment company may issue debentures pursuant to this  
24          Act if the Administration certifies that the company meets  
25          the following criteria:

1           “(1) SIZE.—The development company is re-  
2           quired to be a small concern with fewer than 500  
3           employees and not under the control of any entity  
4           which does not meet the Administration’s size stand-  
5           ards as a small business, except that any develop-  
6           ment company which was certified by the Adminis-  
7           tration prior to December 31, 2005 may continue to  
8           issue debentures.

9           “(2) PURPOSE.—The primary purpose of the  
10          development company is to benefit the community by  
11          fostering economic development to create and pre-  
12          serve jobs and stimulate private investment.

13          “(3) PRIMARY FUNCTION.—The primary func-  
14          tion of the development company is to accomplish its  
15          purpose by providing long-term financing to small  
16          businesses by the utilization of the Certified Devel-  
17          opment Company Economic Development Loan Pro-  
18          gram. It may also provide or support such other  
19          local economic development activities to assist the  
20          community.

21          “(4) NON-PROFIT STATUS.—The development  
22          company is a non-profit corporation, except that a  
23          development company certified by the Administra-  
24          tion prior to January 1, 1987, may retain its status  
25          as a for-profit corporation.

1           “(5) GOOD STANDING.—The development com-  
2           pany is in good standing in its State of incorpora-  
3           tion and in any other State in which it conducts  
4           business, and is in compliance with all laws, includ-  
5           ing taxation requirements, in its State of incorpora-  
6           tion and in any other State in which it conducts  
7           business.

8           “(6) MEMBERSHIP.—The development company  
9           should have at least 25 members (or stockholders if  
10          the corporation is a for-profit entity), none of whom  
11          may own or control more than 20 percent of the  
12          company’s voting membership, consisting of rep-  
13          resentation from each of the following groups (none  
14          of which are in a position to control the development  
15          company):

16                 “(A) Government organizations that are  
17                 responsible for economic development.

18                 “(B) Financial institutions that provide  
19                 commercial long-term fixed asset financing.

20                 “(C) Community organizations that are  
21                 dedicated to economic development.

22                 “(D) Businesses.

23           “(7) BOARD OF DIRECTORS.—The development  
24          company has a board of directors that—

1           “(A) is elected from the membership by  
2           the members;

3           “(B) should represent at least 3 of the 4  
4           groups enumerated in subsection (a)(6) with no  
5           group is in a position to control the company;  
6           and

7           “(C) meets on a regular basis to make pol-  
8           icy decisions for such company.

9           “(8)   PROFESSIONAL   MANAGEMENT   AND  
10          STAFF.—The development company has full-time  
11          professional management, including a chief executive  
12          officer to manage daily operations, and a full-time  
13          professional staff qualified to market the Certified  
14          Development Company Economic Development Loan  
15          Program and handle all aspects of loan approval and  
16          servicing, including liquidation, if appropriate. The  
17          development company is required to be independ-  
18          ently managed and operated to pursue its economic  
19          development mission and to employ its chief execu-  
20          tive officer directly, with the following exceptions:

21                 “(A) A development company may be an  
22                 affiliate of another local non-profit service cor-  
23                 poration (specifically excluding another develop-  
24                 ment company) whose mission is to support

1 economic development in the area in which the  
2 development company operates. In such a case:

3 “(i) The development company may  
4 satisfy the requirement for full-time pro-  
5 fessional staff by contracting with a local  
6 non-profit service corporation (or one of its  
7 non-profit affiliates), or a governmental or  
8 quasi-governmental agency, to provide the  
9 required staffing.

10 “(ii) The development company and  
11 the local non-profit service corporation may  
12 have partially common boards of directors.

13 “(B) A development company in a rural  
14 area (as defined in section 501(f)) shall be  
15 deemed to have satisfied the requirements of a  
16 full-time professional staff and professional  
17 management ability if it contracts with another  
18 certified development company which has such  
19 staff and management ability and which is lo-  
20 cated in the same general area to provide such  
21 services.

22 “(C) A development company that has  
23 been certified by the Administration as of De-  
24 cember 31, 2005, and that has contracted with

1 a for-profit company to provide services as of  
2 such date may continue to do so.

3 “(b) AREA OF OPERATIONS.—The Administration  
4 shall specify the area in which an applicant is certified  
5 to provide assistance to small businesses under this title,  
6 which may not initially exceed its State of incorporation  
7 unless it proposes to operate in a local economic area  
8 which is required to include part of its State of incorpora-  
9 tion and may include adjacent areas within several States.  
10 After a development company has demonstrated its ability  
11 to provide assistance in its area of operations, it may re-  
12 quest the Administration to be allowed to operate in one  
13 or more additional States as a multi-State certified devel-  
14 opment company if it satisfies the following criteria:

15 “(1) Each additional State is contiguous to the  
16 State of incorporation, except the States of Alaska  
17 and Hawaii shall be deemed to be contiguous to any  
18 State abutting the Pacific ocean.

19 “(2) It demonstrates its proficiency in making  
20 and servicing loans under the Certified Development  
21 Company Economic Development Loan Program  
22 by—

23 “(A) requesting and receiving designation  
24 as an accredited lender under section 507 or a  
25 premier certified lender under section 508; and

1           “(B) meeting or exceeding performance  
2           standards established by the Administration.

3           “(3) The development company adds to the  
4           membership of its State of incorporation additional  
5           membership from each additional State and the  
6           added membership meets the requirements of sub-  
7           section (a)(6).

8           “(4) The development company adds at least  
9           one member to its board of directors in the State of  
10          incorporation, providing that added member was se-  
11          lected by the membership of the development com-  
12          pany.

13          “(5) The company meets such other criteria or  
14          complies with such conditions as the Administration  
15          deems appropriate.

16          “(c) PROCESSING OF EXPANSION APPLICATIONS.—  
17          The Administration shall respond to the request of a cer-  
18          tified development company for certification as a multi-  
19          State company on an expedited basis within 30 days of  
20          receipt of a completed application if the application dem-  
21          onstrates that the development company meets the re-  
22          quirements of subsection (b)(1) through (b)(4).

23          “(d) USE OF FUNDS LIMITED TO STATE WHERE  
24          GENERATED.—Any funds generated by a not-for-profit  
25          development company from making loans under the Cer-

1 certified Development Company Economic Development  
2 Loan Program which remain after payment of staff, oper-  
3 ating and overhead expenses shall be retained by the devel-  
4 opment company as a reserve for future operations, for  
5 expanding its area of operations in a local economic area  
6 as authorized by the Administration, or for investment in  
7 other local economic development activity in the State  
8 from which the funds were generated.

9 “(e) ETHICAL REQUIREMENTS.—

10 “(1) IN GENERAL.—Certified development com-  
11 panies, their officers, employees and other staff,  
12 shall at all times act ethically and avoid activities  
13 which constitute a conflict of interest or appear to  
14 constitute a conflict of interest. No one may serve as  
15 an officer, director or chief executive officer of more  
16 than one certified development company.

17 “(2) PROHIBITED CONFLICT IN PROJECT  
18 LOANS.—As part of a project under the Certified  
19 Development Company Economic Development Loan  
20 Program, no certified development company may  
21 recommend or approve a guarantee of a debenture  
22 by the Administration that is collateralized by a sub-  
23 ordinated lien position on the property being con-  
24 structed or acquired and also provide, or be affili-  
25 ated with a corporation or other entity, for-profit or

1 non-profit, which provides, financing collateralized  
2 by a prior lien on the same property. Upon approval  
3 by the Administrator, a business development com-  
4 pany that was participating as a first mortgage lend-  
5 er, either directly or through an affiliate, for the  
6 Certified Development Company Economic Develop-  
7 ment Loan Program in either fiscal years 2004 or  
8 2005 may continue to do so.

9 “(3) OTHER ECONOMIC DEVELOPMENT ACTIVI-  
10 TIES.—Operation of multiple programs to assist  
11 small business concerns in order for a certified de-  
12 velopment company to carry out its economic devel-  
13 opment mission shall not be deemed a conflict of in-  
14 terest, but notwithstanding any other provision of  
15 law, no development company may accept funding  
16 from any source, including but not limited to any de-  
17 partment or agency of the United States Govern-  
18 ment—

19 “(A) if such funding includes any condi-  
20 tions, priorities or restrictions upon the types of  
21 small businesses to which they may provide fi-  
22 nancial assistance under this title; or

23 “(B) if it includes any conditions or im-  
24 poses any requirements, directly or indirectly,  
25 upon any recipient of assistance under this title

1           unless the department or agency also provides  
2           all of the financial assistance to be delivered by  
3           the development company to the small business  
4           and such conditions, priorities or restrictions  
5           are limited solely to the financial assistance so  
6           provided.”.

7 **SEC. 203. DEFINITION OF RURAL AREAS.**

8           Section 501 of the Small Business Investment Act  
9           of 1958 (15 U.S.C. 695) is amended by adding at the end  
10          the following new subsection:

11          “(f) As used in subsection (d)(3)(D), the term ‘rural’  
12          shall include any area other than—

13                  “(1) a city or town that has a population great-  
14                  er than 50,000 inhabitants; and

15                  “(2) the urbanized area contiguous and adja-  
16                  cent to such a city or town.”.

17 **SEC. 204. BUSINESSES IN LOW-INCOME AREAS.**

18          Section 501(d)(3) of the Small Business Investment  
19          Act of 1958 (15 U.S.C. 695(d)(3)) is amended by insert-  
20          ing after “business district revitalization” the following:  
21          “or expansion of businesses in low-income communities  
22          that would be eligible for new market tax credit invest-  
23          ments under section 45D of the Internal Revenue Code  
24          of 1986 (26 U.S.C. 45D)”.

1 **SEC. 205. COMBINATIONS OF CERTAIN GOALS.**

2 Section 501(e) of the Small Business Investment Act  
3 of 1958 (15 U.S.C. 695(e)) is amended by adding at the  
4 end the following:

5 “(7) A small business concern that is uncondi-  
6 tionally owned by more than one individual, or a cor-  
7 poration whose stock is owned by more than one in-  
8 dividual, is deemed to achieve a public policy goal  
9 under subsection (d)(3) if a combined ownership  
10 share of at least 51 percent is held by individuals  
11 who are in one of the groups listed as public policy  
12 goals specified in subsection (d)(3)(C) or  
13 (d)(3)(E).”.

14 **SEC. 206. REFINANCING.**

15 Section 502 of the Small Business Investment Act  
16 of 1958 (15 U.S.C. 696) is amended by adding at the end  
17 the following:

18 “(7) PERMISSIBLE DEBT REFINANCING.—Any  
19 financing approved under this title may also include  
20 a limited amount of debt refinancing for debt that  
21 was not previously guaranteed by the Administra-  
22 tion. If the project involves expansion of a small  
23 business which has existing indebtedness  
24 collateralized by fixed assets, a limited amount may  
25 be refinanced and added to the expansion cost, pro-  
26 viding—

1           “(A) the proceeds of the indebtedness were  
2           used to acquire land, including a building situ-  
3           ated thereon, to construct a building thereon or  
4           to purchase equipment;

5           “(B) the borrower has been current on all  
6           payments due on the existing debt for at least  
7           the past year; and

8           “(C) the financing under the Certified De-  
9           velopment Company Economic Development  
10          Loan Program will provide better terms or rate  
11          of interest than now exists on the debt.”.

12 **SEC. 207. ADDITIONAL EQUITY INJECTIONS.**

13          Clause (ii) of section 502(3)(B) of the Small Business  
14          Investment Act of 1958 (15 U.S.C. 696(3)(B)) is amend-  
15          ed to read as follows:

16                           “(ii) FUNDING FROM INSTITU-  
17                           TIONS.—

18                           “(I) If a small business concern  
19                           provides the minimum contribution re-  
20                           quired under paragraph (C), not less  
21                           than 50 percent of the total cost of  
22                           any project financed pursuant to  
23                           clauses (i), (ii), or (iii) of subpara-  
24                           graph (C) shall come from the institu-

1            tions described in subclauses (I), (II),  
2            and (III) of clause (i).

3            “(II) If a small business concern  
4            provides more than the minimum con-  
5            tribution required under paragraph  
6            (C), any excess contribution may be  
7            used to reduce the amount required  
8            from the institutions described in sub-  
9            clauses (I), (II), and (III) of clause (i)  
10           except that the amount from such in-  
11           stitutions may not be reduced to an  
12           amount less than the amount of the  
13           loan made by the Administration.”.

14 **SEC. 208. LOAN LIQUIDATIONS.**

15           Section 510 of the Small Business Investment Act  
16 of 1958 (15 U.S.C. 697g) is amended—

17           (1) by redesignating subsection (e) as sub-  
18           section (g); and

19           (2) by inserting after subsection (d) the fol-  
20           lowing:

21           “(e) PARTICIPATION.—

22           “(1) MANDATORY.—Any certified development  
23           company which elects not to apply for authority to  
24           foreclose and liquidate defaulted loans under this  
25           section or which the Administration determines to be

1 ineligible for such authority shall contract with a  
2 qualified third-party to perform foreclosure and liq-  
3 uidation of defaulted loans in its portfolio. The con-  
4 tract shall be contingent upon approval by the Ad-  
5 ministration with respect to the qualifications of the  
6 contractor, the terms and conditions of liquidation  
7 activities, and the ability to reimburse such con-  
8 tractor.

9 “(2) COMMENCEMENT.—The provisions of this  
10 subsection shall not require any development com-  
11 pany to liquidate defaulted loans until the Adminis-  
12 tration has adopted and implemented a program to  
13 compensate and reimburse development companies  
14 as provided under subsection (f).

15 “(f) COMPENSATION AND REIMBURSEMENT.—

16 “(1) REIMBURSEMENT OF EXPENSES.—The  
17 Administration shall reimburse each certified devel-  
18 opment company for all expenses paid by such com-  
19 pany as part of the foreclosure and liquidation ac-  
20 tivities if the expenses—

21 “(A) were approved in advance by the Ad-  
22 ministration either specifically or generally; or

23 “(B) were incurred by the company on an  
24 emergency basis without Administration prior

1 approval but which were reasonable and appro-  
2 priate.

3 “(2) COMPENSATION FOR RESULTS.—The Ad-  
4 ministration shall develop a schedule to compensate  
5 and provide an incentive to qualified State or local  
6 development companies which foreclose and liquidate  
7 defaulted loans. The schedule shall be based on a  
8 percentage of the net amount recovered but shall not  
9 exceed a maximum amount. The schedule shall not  
10 apply to any foreclosure which is conducted pursu-  
11 ant to a contract between a development company  
12 and a qualified third-party to perform the fore-  
13 closure and liquidation.”.

14 **SEC. 209. CLOSING COSTS.**

15 Paragraph (4) of section 503(b) of the Small Busi-  
16 ness Investment Act of 1958 (15 U.S.C. 697(b)) is amend-  
17 ed to read as follows:

18 “(4) the aggregate amount of such debenture  
19 does not exceed the amount of loans to be made  
20 from the proceeds of such debenture plus, at the  
21 election of the borrower under the Certified Develop-  
22 ment Company Economic Development Loan Pro-  
23 gram, other amounts attributable to the administra-  
24 tive and closing costs of such loans, except for the  
25 borrower’s attorney fees;”.

1 **SEC. 210. UNIFORM LEASING POLICY.**

2 (a) IN GENERAL.—Section 502 of the Small Business  
3 Investment Act of 1958 (15 U.S.C. 696) is amended—

4 (1) by striking paragraphs (4) and (5) and in-  
5 serting the following:

6 “(4) LIMITATION ON LEASING.—If the use of a  
7 loan under this section includes the acquisition of a  
8 facility or the construction of a new facility, the  
9 small business concern assisted—

10 “(A) shall permanently occupy and use not  
11 less than a total of 50 percent of the space in  
12 the facility; and

13 “(B) may, on a temporary or permanent  
14 basis, lease to others not more than 50 percent  
15 of the space in the facility.”; and

16 (2) by redesignating paragraph (6) as para-  
17 graph (5).

18 (b) POLICY FOR 7(a) LOANS.—Section 7(a)(28) of  
19 the Small Business Act (15 U.S.C. 636(a)(28)) is amend-  
20 ed to read as follows:

21 “(28) LIMITATION ON LEASING.—If the use of  
22 a loan under this subsection includes the acquisition  
23 of a facility or the construction of a new facility, the  
24 small business concern assisted—

1           “(A) shall permanently occupy and use not  
2           less than a total of 50 percent of the space in  
3           the facility; and

4           “(B) may, on a temporary or permanent  
5           basis, lease to others not more than 50 percent  
6           of the space in the facility.”.

7 **TITLE III—SMALL BUSINESS IN-**  
8 **VESTMENT COMPANY PRO-**  
9 **GRAM**

10 **SEC. 301. SIMPLIFIED MAXIMUM LEVERAGE LIMITS.**

11           Section 303(b) of the Small Business Investment Act  
12 of 1958 (15 U.S.C. 683(b)) is amended—

13           (1) by striking paragraph (2) and inserting the  
14 following:

15           “(2) MAXIMUM LEVERAGE.—

16           “(A) IN GENERAL.—The maximum  
17 amount of outstanding leverage made available  
18 to any one company licensed under section  
19 301(c) of this Act may not exceed the lesser  
20 of—

21           “(i) 300 percent of such company’s  
22 private capital; or

23           “(ii) \$150,000,000.

24           “(B) MULTIPLE LICENSES UNDER COM-  
25 MON CONTROL.—The maximum amount of out-

1 standing leverage made available to two or more  
2 companies licensed under section 301(c) of this  
3 Act that are commonly controlled (as deter-  
4 mined by the Administrator) and not under  
5 capital impairment may not exceed  
6 \$225,000,000.”; and

7 (2) by striking paragraph (4).

8 **SEC. 302. SIMPLIFIED AGGREGATE INVESTMENT LIMITA-**  
9 **TIONS.**

10 Section 306(a) of the Small Business Investment Act  
11 of 1958 (15 U.S.C. 686(a)) is amended to read as follows:

12 “(a) **PERCENTAGE LIMITATION ON PRIVATE CAP-**  
13 **ITAL.**—If any small business investment company has ob-  
14 tained financing from the Administration and such financ-  
15 ing remains outstanding, the aggregate amount of securi-  
16 ties acquired and for which commitments may be issued  
17 by such company under the provisions of this title for any  
18 single enterprise shall not, without the approval of the Ad-  
19 ministration, exceed 10 percent of the sum of—

20 “(1) the private capital of such company; and

21 “(2) the total amount of leverage projected by  
22 the company in the company’s business plan that  
23 was approved by the Administration at the time of  
24 the grant of the company’s license.”.

○